

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

March 2007

The End is HERE!

The 2007 session of the Legislature is over! As always, the session was interesting, to put it mildly.

Educators and education groups were chastised several times during the process for not being thankful enough during this and past sessions for all that legislators do.

Legislators did provide a significant increase to base education funding amounts this year. In addition, teachers received a pay increase in the form of a \$1,000.00 one time bonus and a \$2,500.00 raise (pretax). Classified employees also received a slight bump in pay—equal to an estimated \$650.00 for the year after taxes.

The Legislature also provided \$50,000,000.00 for computers and other technology and \$1,500,000.00 in ongoing funds for school libraries.

Legislators funded a few pet projects, such as a critical languages program and a study of school discipline measures.

The Weighted Pupil Unit, meanwhile, was raised 4%, far less than the 10% the State Board initially sought and the 7% it hoped for in the end.

As most people are well aware, legislators also

chose to fund a third education program in the form of private school vouchers. While traditional and charter schools remain funded far below national standards, parents may now receive state money to send their children to private schools.

The legislation passed the House by one vote

and has been challenged by Utahns for Public Schools (for more information on

the challenge, see page 2).

Legislators also managed to pass some long sought after legislation, including the perennial Medical Recommendations for Children bill and a convoluted, confusing and absolutely unnecessary Student Clubs Amendments bill.

These bills continue the legislative erosion of State Board authority. Both bills copy substantial portions of State Board rules and add additional, and often illadvised, requirements. The sponsors of each bill insisted this was necessary, but neither had any

verifiable complaints about the effectiveness of the rules.

Educators do owe legislators a hearty thank you for squelching several bills.

In the final minutes of the session, legislators blocked a bill establishing partisan elections for State Board members from being debated on the House floor. Moments earlier, legislators killed a bill that would have allowed home school students to play sports with a note from their moms, while public and private school students would have to continue to meet objective standards of academic eligibility.

Legislators also killed a proposed resolution in support of changing the state Constitution. Under the Constitution, the State Superintendent is selected by the State Board. The resolution sought to give the appointment power to the governor instead, leaving the Board with no influence over an important public education leader.

With the influx of money and the defeat of these illconceived bills, the session was a productive one overall for public education.

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UPPAC CASES

- The Utah State Board of Education revoked the license of Benjamin Rojas Hernandez by default. The action is taken as a result of Mr. Hernandez' use of school equipment to view and store pornography.
- The State Board reinstated the license of Kenneth Robert Banz.
 Mr. Banz' license was suspended in 2000 as a result of inappropriate and unprofessional accounting of school funds and expenses over an extended time period.

Eye On Legislation-Voucher Challenge

The day after the gavel fell on the 2007 Legislature, a group of educators, parents and other concerned individuals filed a petition for a referendum against the newly minted private school voucher program.

The referendum petition, if signed by enough registered Utah voters, would put the question of vouchers to a vote of the people.

In short, voters would decide whether the voucher law should be enacted. If the voters approve of the law, it would go into effect as enacted by the Legislature. If the voters disagree with the legislation, the vote would act as a veto of the Legislature's action.

Petitions are now circulating the state through the combined efforts of the Utah Education Association, the state Parent Teacher Association, the National Association for the Advancement of Colored People, the Utah School Boards Association and others. The groups

and individual supporters have joined together to form Utahns for Public Schools (UPS). This Public Interest Committee is raising funds and volunteers to meet the deadline for signatures so the law can be

voted on in the next general election. It seeks individuals from across the state who are willing to sign the petition and those who can commit to getting 10-20 more signatures from friends, family and neighbors.

The group has a lot to do in a short amount of time. UPS has until April 10th to get the 92,000 signatures required to put the issue on the ballot. Of those signatures, 10% must come from those who voted in the last gubernatorial election in at least 15 of the state's 29 counties. All signatories must be registered to vote in Utah.

The group has set up a website to inform voters about the referen-

dum, the voucher bill, and how to support the effort. The website is utahnsforpublicschools.org.

The most likely opponent of the referendum, Parents for Choice in Education, a nationally financed

group, has begun its counteroffensive. The group is running ads on Utah radio stations in support of the program and urging parents to visit the PCE website to learn more about the voucher. Parents can learn

about the program and see how much of a voucher they would qualify for at the site. The PCE site is choiceineducation.org.

As the deadline looms, expect both groups to continue their efforts to sway potential petition signers and voters.

Educators interested in the issue should review the attached list of political activity dos and donts on pages 5-6.

UPPAC Case of the Month

Money makes the world go round, or so the saying goes, but it also costs some educators their professional licenses.

The Utah Professional Practices Advisory Commission has a long string of cases involving educator misuse of school funds. Many of the cases involve the educator's clear intent to steal school monies for personal use.

But there is also a line of cases that stem from the educators' abysmal accounting practices.

Educators can easily avoid a cloud on their licenses due to financial misconduct by strictly following all district accounting policies.

For example, an educator should make all requests for money, whether to school administration or parent-led booster clubs, with proper documentation

of the potential purchase, including the vendor, cost and a short explanation of the need for the purchase (why do you need new uniforms for all players rather than just buying uniforms for the new players?!).

It may be more work than the educator wants to do, but providing adequate information to the right people can protect the educator from em-

barrassing questions down the road. And it avoids the appearance of impropriety, such as a sense among fellow educators or parents that one educator is able to "get away" with less than perfect documentation while others have to follow the accounting policies.

Sloppy accounting may also lead to a suspension of the educator's license. In one UPPAC case, for example, an educator had cash and receipts stored in multiple places in his office, including shoe boxes, drawers, tacked to a bulletin board, and lying on a desk. When the principal started asking questions, like why was the educator even collecting money from students, the educator could provide no answers, and no documentation that all of the funds collected had been properly receipted and spent.

Often, accounting errors are intentionally designed to obscure a money trail. But educators who use the money appropriately must still be able to document the receipt, deposit, and expenditure of all school and student monies.

And if school or district policies are less than helpful, common sense should tell an educator that he needs to be able to show who he got money from and where it was spent, without having to rely on his memory.

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Recent Education Cases

<u>Texas v. Zascavage</u>, (Ct. App. 2007). Lesson from this case— the best protection from liability is to make your athletic celebrations the responsibility of the parents!

A Texas wrestling coach was charged with a misdemeanor following a Saturday night party for the 73-member wrestling team. Older team members slapped freshman members as part of their initiation to the team. The coach was criminally charged for failing to prevent student hazing.

The court found that the coach had no duty to protect the students at a parent-sponsored party. The coach assumed no duty to care for students where the party was not mandatory, neither coach nor players were required to attend, and parents were welcome to attend. Since the party was beyond the scope of the coach's employment, he could not be criminally liable for the acts of the students.

Matter of Cody v. Comm'r of Labor, (N.Y. 2007). On the other hand, educators who don't do their required duties can be terminated for misconduct and denied unemployment benefits.

Cody was a tenured guidance counselor. She was terminated for

42 acts of misconduct, including failing to report a student's possession of illegal drugs, attempting to surreptitiously distribute an unauthorized survey on school property, and engaging in 36 incidents of improper revisions to stu-

dent records or transcripts.

The court noted that each of the 42 acts represented a "departure from established procedures" and found that the board's decision to

terminate for misconduct was justified. The teacher could not, therefore, claim unemployment benefits.

Sands v. Whitnall, (Wis. Ct. App. 2006). An employee could not compel the school board to release the minutes of a closed meeting. The employee served as the district supervisor of the Gifted and Talented Education Program. The Board became dissatisfied with her performance and met in two closed sessions to discuss her employment with the district. After the second meeting, the board met in open session and voted not to continue her contract.

The employee sued and sought information about the closed meeting discussions. The court denied her request, noting that the state statute is clear that discussions from a properly closed meeting are not discover-

able, even by the person who is the subject of the discussions.

Myers v. Dallas Independent School
Dist., (5th Cir. 2007). A 73-year old

job applicant could not sustain an age discrimination claim against a school district. The district was able to show, on a motion for summary judgment, that the applicant's application was sloppily prepared, he interviewed poorly, and he made inappropriate comments to the interviewers.

The applicant's evidence, on the other hand, consisted only of the fact that the district hired someone younger than he.

Given the weight of the evidence, or lack thereof, the court granted the district's motion for summary judgment and dismissed the case.

Your Questions

Q: My daughter is being harassed at school and the principal and superintendent refuse to take any action. What can I do?

A: If the harassment is severe, pervasive or objectively offensive, call a lawyer. A school/district that ignores such harassment faces a boatload of legal liability should anything happen to the harassed student.

Before calling the lawyers, however, determine if there is any way to reach the superintendent, eiWhat do you do when. . . ?

ther through a one-on-one discussion or a discussion with local board members who may be more receptive to talk of legal liability.

In the meantime, document the complaints you have made and the responses with as much detail as you can reasonably provide.

Documentation should be factual—do not include impressions

or any preconceived notions about the response.

Also keep in mind that a school does not have to use your preferred method of dealing with a situation. The school should, however conduct some level of investigation into the situation to determine what is happening between the students. If the school finds that harassment exists, it may take a variety of actions. It may NOT tell the parent of one student what actions it has taken against another.

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Utah State Office of Education

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3)

But it MUST provide some assurance of your daughter's safety.

A school is not responsible for every altercation between students. But it does have a duty to protect students from known harms. If the school refuses to investigate or take action against a known harasser, the next step may be to call law enforcement to report the abusive situation between the students and to obtain legal counsel to represent the parent and child's rights.

Q: I heard there was a bill to allow employees to keep firearms in their cars. What happened to this and what does it mean for me as a school employee?

A: The bill did not pass the legislature. Even if it had, it would

not have affected a school employee in any way since school districts were exempted from the law.

Q: I have been told that the State Board of Education seeks to pass a rule that would require me to be a "paragon of virtue" 24 hours a day, seven days a week. Is this true?

A: We are not aware of any rule change that would require this of educators. The current rule of Professional Practices does require that educators act as reasonable law-abiding citizens. The State Board does intend to make the rule a Board rule, and is revamping the rule to address some issues with the current rule, but the rule does not do all that you have been told.

The current and future rule will require that educators refrain from criminal misconduct, teach the

curriculum, and uphold professional standards. It will not require that they be "paragons of virtue"— whatever that might mean.

The State Board does expect educators to be role models of civic responsibility to students. This means that edu-

cators are expected to follow the laws of the state and nation, just as any citizen is expected to do.

If an educator finds the criminal code too difficult to uphold, the State Board does and will seek to suspend or revoke the educator's license based on his or her inability to act within the bounds of behavior expected of Utah citizens (we have yet to find anyone who could effectively teach from prison).

POLITICAL ACTIVITIES IN SCHOOL AND BY EDUCATORS

RECOMMENDED ACTIVITIES

- •DO present factual information and be prepared to answer questions at school community council, PTA meetings, other parent organizations events and request parent and employee support and help on various issues of public concern. (Utah Code § 20-11-1203) (Vargas-Harrison v. Racine Unified School Dist. 272 F.3d 964, 7th Cir. 2001).
- •DO provide a "political information" signing and information table at school events–staffed by non-employees and consistent with school district policies (Utah Code §§ 20A-8-404, 20A-11-1203).
- •DO inform patrons of political and education issues through school wide newsletters, websites, etc. If the school offers opinions through official channels, provide both pro and con information. (Utah Code § 20A-11-1203(3)) (Roth v. United States, 354 U.S. 476, 484, 1957).
- •DO take persuasive political information to family, friends, neighbors, and other households in your school neighborhood after school hours. (Utah Code § 20-11-1203(6)).
- •DO encourage parents, spouses, family members and friends to use informative or persuasive information to educate and influence their friends, neighbors, coworkers, etc. (Utah Code § 20A-11-1203(4)).
- •DO offer your personal thoughts and opinions to students, parents or patrons, **only after being** asked to do so.
- •DO exercise your right to free speech and political involvement on a "matter of public concern" during non-contract time. (Pickering v. Board of Education, 1968 U.S. Supreme Court case and Connick v. Myers, 1983 U.S. Supreme Court case)

(See the reverse side for **ACTIVITIES TO AVOID**)

ACTIVITIES TO AVOID

- •Do NOT contact people about their political positions using the school email system, mail, directory, or other school resources, except as clearly allowed by negotiated agreement with employee associations. (Utah Code § 67-16-4, 20 U.S. Code § 1232g).
- •Do NOT circulate a referendum or initiative petition or political information during contract time
- •Do NOT fund-raise or campaign during contract time or PAID association leave time. (Federal Hatch Act and Utah Code § 53A-3-425).
- •Do NOT wear political buttons during contract time.
- •Do NOT deny an opponent equal access to present a position different than your own on school property. (You do not, however, have to seek out an opposing view point.) City of Madison v. Wisconsin Employment Relations Commission, 429 U.S. 167)(Utah Code § 20A-11-1203-(3))
- •Do NOT harass a fellow employee or patron about her position on any political issue.
- •Do NOT staff a petition table about political or partisan issues while you are being paid by the school to be at a school event.
- •Do NOT try to convince employees whom <u>you</u> supervise. You CAN answer questions from employees and provide factual information, such as "You must be registered to vote or become registered in order to sign a referendum petition".

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